

APPEAL NO. 032320
FILED OCTOBER 22, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing was held on July 24, 2003. With regard to the disputed issues before her, the hearing officer determined that the appellant's (claimant) _____, compensable injury does not extend to include the condition of the discs at L4-5 and L5-S1 after (subsequent date of injury); that the claimant did not sustain a compensable injury on (subsequent date of injury); and that the claimant did not have disability resulting from the claimed 2002 injury. The claimant appeals these determinations. Respondent 1 (carrier 1) and respondent 2 (carrier 2) urge affirmance of the hearing officer's decision.

DECISION

Affirmed.

The claimant attaches to his appeal all of his exhibits entered at the hearing as well as one new document; a work status report dated June 11, 2003. In determining whether the hearing officer's decision is sufficiently supported by the evidence, we will generally not consider evidence that was not submitted into the record and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the report attached to the claimant's appeal, which was not admitted into evidence at the hearing. Consequently, we decline to consider it on appeal.

The disputed issues in this case involved factual questions for the hearing officer to resolve. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. The hearing officer was not persuaded by the evidence that the claimant satisfied his burden of proof on the issues in question. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). It should be noted that although the hearing officer determined that the claimant's 2001 compensable injury effectively resolved, she does not have the authority to terminate the claimant's lifetime medical benefits for his compensable injury.

The decision and order of the hearing officer are affirmed.

The true corporate name of insurance carrier 1 is **AMERICAN CASUALTY COMPANY of READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEMS
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

The true corporate name of insurance carrier 2 is **FIDELITY & GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge